

**LETTER OPINION
2006-L-24**

August 28, 2006

Mr. Kent A. Reiersen
Williston City Attorney
PO Box 1366
Williston, ND 58802-1366

Dear Mr. Reiersen:

Thank you for your letter asking whether the phrase “mill levy on the taxable valuation” in the state aid to public libraries law refers to the amount of dollars levied rather than the number of mills levied. Based on the following analysis, it is my opinion that “mill levy on the taxable valuation” in the state aid to public libraries law refers to the number of mills levied and not the amount of dollars levied.

ANALYSIS

In approximately November of 2005, the State Auditor’s office began questioning whether the State Library was distributing aid to public libraries in accordance with the law. The Auditor raised concerns regarding the State Library’s interpretation of N.D.C.C. § 54-24.2-04, which provides:

54-24.2-04. Maintenance of local effort. No public library is eligible to receive any funds appropriated under this chapter during a fiscal year if the governing body has diminished the:

1. Mill levy on the taxable valuation below the average of the three preceding fiscal years; or
2. Appropriation for public library services below an amount equal to the revenue derived from the maximum mill levy for public library services authorized under section 40-38-02.

(Emphasis supplied.) For approximately 25 years, the State Library had been interpreting “mill levy on the taxable valuation” in subsection 1 to mean either the

number of mills levied or the amount of dollars levied. The State Auditor's office questioned this interpretation and asked whether the phrase meant number of mills levied.

It is not immediately clear what "mill levy on the taxable valuation" means. It could refer to the number of mills levied or the amount of dollars levied. The phrase is ambiguous because it is susceptible to differing rational meanings.¹ The primary objective in interpreting a statute is to determine the intent of the Legislature.² If a statute is ambiguous, the following may be considered in determining the intention of the legislation: other laws on the same subject, the legislative history, and the administrative construction of the statute.³

Other laws on the same subject are found in N.D.C.C. ch. 54-24.2 regarding state aid to public libraries. Section 54-24.2-02, N.D.C.C., specifies the formula used to make a preliminary determination of the grant or allocation to a particular library. The following statute, N.D.C.C. § 54-24.2-03, immediately precedes the statute at issue. Section 54-24.2-03, N.D.C.C., specifies differing percentages of the allocation that city or county libraries will receive, depending on how many mills the city or county is levying to support its public library. It provides:

54-24.2-03. Incentive for local funding. To provide for increased local funding, public libraries eligible to receive funds under section 54-24.2-02 shall have the funds allocated to them modified in accordance with the following formula:

Cities levying

8.00 or more mills	150 percent of allocation
6.00 - 7.99 mills	125 percent of allocation
4.00 - 5.99 mills	100 percent of allocation
3.00 - 3.99 mills	75 percent of allocation
2.00 - 2.99 mills	50 percent of allocation
1.00 - 1.99 mills	33 percent of allocation
0.01 - 0.99 mills	25 percent of allocation
0.00 - mills	0 percent of allocation

Counties levying

¹ See Kallhoff v. North Dakota Workers' Compensation Bureau, 484 N.W.2d 510 (N.D. 1992).

² Id.

³ N.D.C.C. § 1-02-39; Kallhoff v. North Dakota Workers' Compensation Bureau, 484 N.W.2d 510 (N.D. 1992).

4.00 or more mills	150 percent of allocation
3.00 - 3.99 mills	125 percent of allocation
2.00 - 2.99 mills	100 percent of allocation
1.50 - 1.99 mills	75 percent of allocation
1.00 - 1.49 mills	50 percent of allocation
0.50 - 0.99 mills	33 percent of allocation
0.01 - 0.49 mills	25 percent of allocation
0.00 - mills	0 percent of allocation

The computation of mills must be based upon the levy on the taxable valuation and the mill levy equivalent of other public funds received and deposited in the library fund for the operation of the library by the governing body during the preceding fiscal year as certified by the auditor of the city or county operating the library.

(Emphasis supplied.) Thus, the more mills levied for public libraries at the local level, the greater the percentage of the allocation that will be received. The computation of the number of mills levied, as listed in the left column, “must be based upon the levy on the taxable valuation and the mill levy equivalent of other public funds received and deposited in the library fund”⁴ This appears to mean that, to determine the number of mills under the left column, you add the number of mills levied to the “mill levy equivalent” of other public funds received. Thus, it appears that “levy on the taxable valuation,” as used in N.D.C.C. § 54-24.2-03, means the number of mills levied. The phrase, “levy on the taxable valuation” in N.D.C.C. § 54-24.2-03 is similar to the phrase, “mill levy on the taxable valuation” in N.D.C.C. § 54-24.2-04. The use of the phrase in N.D.C.C. § 54-24.2-03 suggests that the use of the similar phrase in N.D.C.C. § 54-24.2-04 also refers to the number of mills levied.

A review of the legislative history is also helpful in determining the meaning of N.D.C.C. § 54-24.2-04.⁵ This statute was amended in 1981 as follows:

54-24.2-04. MAINTENANCE OF LOCAL EFFORT. No public library ~~shall be~~ is eligible to receive any funds appropriated under this chapter during a fiscal year if the ~~total of the mill~~ governing body has diminished the:

1. Mill levy on the taxable valuation and the mill levy equivalent of other public funds received and deposited in the library fund for the operation of the library has been diminished

⁴ N.D.C.C. § 54-24.2-03 (emphasis supplied).

⁵ N.D.C.C. § 1-02-39.

~~from below the average of the three preceding fiscal years. Excluded are Comprehensive Employment Training Act funds, Library Services and Construction Act funds, and other grants of a nonrecurring nature; or~~

2. Appropriation for public library services below an amount equal to the revenue derived from the maximum mill levy for public library services authorized under section 40-38-02.⁶

The underlined language was proposed new language and the overstruck language was proposed to be removed from the law. Representative Unhjem was the prime sponsor of the bill. The following is an excerpt from his testimony before the Senate State and Federal Government Committee:

The other major problem that we encountered with the state aid to public libraries, legislation in the last session, was the maintenance of local effort found on section 6. And it required that no library would be eligible for state aid funds if during the fiscal year the total of the mill levy on the taxable valuation and the mill levy equivalent of other public funds given by the governing body of a political subdivision was, fell below the average for the three preceding fiscal years. The problem that happened in many areas was that the State Board of Equalization lowered the assessment levels around the state and many libraries, even though they were still levying two mills or four mills were bringing in less money than they had for the average of the three preceding fiscal years. . . . These amendments would simply say as long as the number of mills being levied did not go down and as long as the appropriation of other revenue given by the city or the county commissioners didn't go down . . . [the library would receive state aid].⁷

Thus, the prime sponsor of the bill understood "mill levy on the taxable valuation" to mean "the number of mills being levied," and he relayed this understanding to the legislators who passed the bill.

Another way to determine legislative intent is to consider the administrative construction of the statute.⁸ Although the State Library has, for 25 years, interpreted "mill levy on the taxable valuation" to mean either the number of mills levied or the amount of dollars

⁶ 1981 N.D. Sess. Laws ch. 418, § 6.

⁷ Hearing on H.B. 1551 Before the Senate Comm. on State and Federal Government, 1981 N.D. Leg. (Mar. 2) (Statement of Rep. Unhjem) (emphasis supplied).

⁸ N.D.C.C. § 1-02-39.

LETTER OPINION 2006-L-24
August 28, 2006
Page 5

levied, such interpretation is not supported by the legislative history, nor is it supported by reading this law in context with other laws using similar language in the chapter regarding state aid to public libraries.

While I am mindful of the burden this statutory wording may place on public libraries, I believe this interpretation of the current statute is clear. I have previously recommended that the State Library seek an amendment to the statute when the 2007 session of the Legislature convenes, and I understand the State Library is preparing to do so.

In conclusion, it is my opinion that "mill levy on the taxable valuation," as used in N.D.C.C. § 54-24.2-04, refers to the number of mills levied.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.⁹

⁹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).